PROCHNIAK POET & WEISBERG, P.C.
MATTHEW B. WEISBERG, ESQUIRE
IDENTIFICATION NO.: 85770
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ATTORNEY FOR PLAINTIFF

ANTHONY DIMEO, III 226 WEST RITTENHOUSE SQUARE PHILADELPHIA, PA 19103	EASTERN DISTRICT OF PENNSYLVANIA
v.	NO.: 2: 06-CV-01544-50
TUCKER MAX 143 Madison Avenue New York, NY 10016	

PLAINTIFF'S PETITION FOR REMAND TO THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY AND STAY DEFENDANT'S PENDING MOTION TO DISMISS

1. Plaintiff commenced this Action on March 10, 2006, in the Court of Common Pleas, Philadelphia County Pennsylvania (No.: 060305176)

2. On that same day, Defendant, Tucker Max, publicly acknowledged receipt of notice of this lawsuit. (See attached Exhibit "A").

3. On April 12, 2006, Defendant filed his Notice of Removal under 28. U.S.C. §1446(b), alleging the timeliness of this removal as having been filed within thirty (30) days of service (March 23, 2006-via e-mail to Defendant's counsel) of the Complaint. (See Defendant's Notice of Removal, ¶3).

4. While it is admitted (upon information and belief) that parties are of diverse citizenship and the amount in controversy is in excess is $75,000.00, Defendant's removal of this matter is beyond the thirty (30) day allowable time period under 28 U.S.C.§1332(a) and 28 U.S.C. §1441, and is barred in light of Defendant's prior notice.

5. Additionally, Defendant alleges the right to removal upon Defendant's Complained of violations of 47 U.S.C. §223(a)(1)(c) (the Communications Act of 1943, as amended)

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pursuant to 28 U.S.C. §1367, as Plaintiff's state law claims allegedly form part of the same case or controversy as the Federal claim.

6. However, the period of limitations for removal of any claim under 1367(a) is also thirty (30) days, which has also expired in light of aforesaid admitted notice.

7. In light of the pending Motion to Dismiss, Plaintiff requests the proposed Stay pending adjudication of this instant Petition.

WHEREFORE, Plaintiff- Petitioner, Anthony DiMeo, III, hereby requests this Honorable Court remand this action to the Court of Common Pleas, Philadelphia County, Pennsylvania, from the United States District Court for the Eastern District of Pennsylvania.

PROCHNIAK POET & WEISBERG, P.C

BY: ________________________________
Matthew B. Weisberg

ANTHONY DIMEO, III : EASTERN DISTRICT
226 WEST RITTENHOUSE SQUARE : OF PENNSYLVANIA
PHILADELPHIA, PA 19103 :
:
v. :
: NO.: 2: 06-CV-01544-50
TUCKER MAX :
143 Madison Avenue :
New York, NY 10016 :

ORDER

AND NOW, this ___________day of _____________, 2006, upon consideration of Plaintiff's Petition to Remand, and any response thereto, it is hereby **ORDERED** and **DECREED** that this matter is remanded to the Court of Common Pleas, Philadelphia County, Pennsylvania.

The Clerk of this Court is directed to effectuate this Remand.

BY THE COURT:

____
J.

ANTHONY DIMEO, III 226 WEST RITTENHOUSE SQUARE PHILADELPHIA, PA 19103	: : : :	EASTERN DISTRICT OF PENNSYLVANIA
v.	: :	NO.: 2: 06-CV-01544-50
TUCKER MAX 143 Madison Avenue New York, NY 10016	: : :	

ORDER

AND NOW, this ___________day of _____________, 2006, upon consideration of Plaintiff's Petition to Stay, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Petition is **GRANTED**, adjudication of Defendant's Motion to Dismiss is Stayed until the adjudication of Plaintiff's pending Petition to Remand, and Plaintiff is **GRANTED** leave to respond, if applicable, to said Motion to Dismiss ten (10) days after Entry of this Honorable Court's Order upon Plaintiff's Petition to Remand.

____
J.

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v.	: : :	NO.: 2: 06-CV-01544-50
TUCKER MAX 143 Madison Avenue New York, NY 10016	: : :	

CERTIFICATE OF SERVICE

I, Matthew B. Weisberg, Esquire, hereby certify that on this 24 day of April, 2006, a true and correct copy of Plaintiff's Petition for Remand and Stay of Defendant's pending Motion was served via United States Mail, first class, postage prepaid, upon the following parties:

PROCHNIAK POET & WEISBERG, P.C.

BY: ______________________________
Attorney for Plaintiff